

floodway (often referred to as “floodway fringe”).

(j) *Floodplain*— the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

(k) *Floodproofing*— the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.

(l) *Minimize*— to reduce to the smallest possible amount or degree.

(m) *One percent chance flood*— the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year. For example, there are two chances in three of a larger flood exceeding the one percent chance flood in a 100-year period.

(n) *Practicable*— capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology.

(o) *Preserve*— to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

(p) *Regulatory floodway*— the area regulated by Federal, State or local requirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the NFIP).

(q) *Restore*— to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

(r) *Structures*— walled or roofed buildings, including mobile homes and gas

or liquid storage tanks that are primarily above ground (as set by the NFIP).

(s) *Wetlands*— “those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds” (as defined in Executive Order 11990 (Protection of Wetlands)).

#### § 63.5 Responsibilities.

(a) The Assistant Attorney General, Land and Natural Resources Division,

(1) Has overall responsibility for ensuring that the Department’s responsibilities for complying with the Orders are carried out.

(2) Will ensure that the Water Resources Council, the Council on Environmental Quality, and the Federal Insurance Agency (FIA) are kept informed of the Department’s execution of the Orders, as necessary, and

(3) Will determine, and revise on a continuing basis, which components of the Department should take further steps, such as the promulgation of program specific procedures, to comply with the Orders. Considerations for making this selection are whether a component:

(i) Acquires, manages, and disposes of federal lands and facilities;

(ii) Provides federally undertaken, financed or assisted construction and improvements;

(iii) Conducts federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities;

(iv) Reviews and approves component procedures for complying with the Orders;

(b) The heads of offices, boards, bureaus and divisions,

(1) Are responsible for preparing program specific guidelines or procedures, where necessary, to comply with the

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Orders and for updating these procedures, as required,

(2) Will maintain general supervision over any new construction planning within the office, board, bureau, or division to see that the policy considerations and procedural requirements contained herein are followed in the planning process,

(3) Will furnish, with all requests for new authorizations or appropriations for proposals to be located in floodplains or wetlands, a statement that the proposal is in accord with the Orders,

(4) Will provide information to applicants for licenses, permits, loans or grants in areas in which floodplain and wetland requirements may have to be met,

(5) Will provide conspicuous notice of past flood damage and potential flood hazard on structures under the component's control and used by the general public, and

(6) If responsible for granting a lease, an easement, or right-of-way, or for disposing of federal property in a floodplain or wetland to nonfederal public or private parties, will, unless otherwise directed by law.

(i) Reference uses in the conveyance that are restricted under identified Federal, State or local floodplain regulations; and

(ii) Attach other appropriate restrictions; or

(iii) Refuse to convey.

### § 63.6 Procedures.

Prior to taking any action, as defined in § 63.4(a) of this part, an office, board, bureau or division shall:

(a) Determine whether the proposed action is located in a wetland and/or the 100-year floodplain (or the 500-year floodplain for critical actions) and determine whether the proposed action has the potential to affect or be affected by a floodplain or wetland. The determination concerning location in a floodplain or wetland shall be performed in accordance with § 63.7 of this part. For actions which are in both a floodplain and wetland, the wetland should be considered as one of the natural and beneficial values of the floodplain.

(b) Notify the public at the earliest possible time of the intent to carry out the action affecting or affected by a floodplain or wetland, and involve the broadest affected and interested public in the decisionmaking process. At a minimum, all notices shall be published in the newspaper serving the project area that has the widest circulation and shall be distributed through the A-95 review process if subject to that process. In addition, notices of actions shall be published in the FEDERAL REGISTER, if so required by the Assistant Attorney General, Land and Natural Resources Division, or by law. For certain actions, notice may entail other audiences and means of distribution. All actions shall be reviewed according to the following criteria to determine the appropriate audience for and means of notification beyond those required above: Scale of action, potential for controversy, degree of public need for the action, number of affected persons, and anticipated potential impacts. Each notice shall include the following: A statement of the purpose of and a description of the proposed action, a map of the general area clearly delineating the action's locale and its relationship to its environs, a statement that it has been determined to be located in or that it affects a floodplain or wetland, a statement of intent to avoid the floodplain or wetland where practicable, and to mitigate impacts where avoidance cannot be achieved, and identification of the responsible official for receipt of comments and for further information.

(c) Identify and evaluate practicable alternatives to locating in a floodplain or wetland (including alternative sites outside the floodplain or wetland; alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to adversely affect the floodplain or wetland; and the "no action" option). The following factors shall be analyzed in determining the practicability of alternatives: Natural environment (topography, habitat, hazards, etc.); social concerns (aesthetics, historical and cultural values, land use patterns, etc.); economic aspects (costs of space, construction, services, and relocation); and legal constraints (deeds, leases,